IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 15TH FEBRUARY 2007 / 26TH MAGHA 1928

Crl.MC.No. 385 of 2007()

CC.304/2006 of CHIEF JUDICIAL MAGISTRATE COURT, KOLLAM

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PETITIONER: ACCUSED

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1. SHIBU, S/O.MUHAMMADALI,
   AGED 27 YEARS, RESIDING AT `JEENA MANZIL',
   VADAKKEVILA VILLAGE, KOLLAM DISTRICT.

2. SURESH, S/O.SUNDARESAN,
   AGED 31 YEARS, RESIDING AT CHARUVILA HOUSE,
   MATHILIL CHERIYIL, THRIKKADAVOOR VILLAGE,
   KOLLAM DISTRICT.

3. SUMINA, W/O.ABDUL VAHAB,
   AGED 22 YEARS, RESIDING AT "TARIQ MANZIL",
   ADINADU NORTH MURI, KULASEKHARAPURAM VILLAGE,
   KOLLAM DISTRICT.

4. ABDUL VAHAB, S/O.YUNUS KUNJU,
   AGED 38 YEARS, RESIDING AT "TARIQ MANZIL",
   ADINADU NORTH MURI, KULASEKHARAPURAM VILLAGE,
   KOLLAM DISTRICT.

BY ADV. SRI.T.M.RAMAN KARTHA

RESPONDENTS: STATE AND DEFACTO COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY
   THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

2. ADDITIONAL SUB INSPECTOR OF POLICE,
   KOLLAM EAST POLICE STATION, KOLLAM
   (CRIME NO.1127/2006).

3. RAJIMOL.V., W/O.SAJIKUMAR,
   RESIDING AT MATTATHU HOUSE, KATTILKADAVU
   POST, ADINADU SOUTH, KARUNAGAPPALLY TALUK,
   KOLLAM DISTRICT.

BY P.P. SRI. S.U. NAZAR.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 15/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 385 OF 2007

Dated this the 15th day of February, 2007

ORDER

The precise grievance raised by the learned counsel for the petitioners in this Crl.M.C. praying for a quashing of the proceedings initiated against the petitioners is that the investigation into the offence punishable under the Trade Marks Act has been conducted by an Investigating Officer not legally qualified and without complying with the proviso to Sec.115(4) of the Trade Marks Act. He further raises a contention that the provisions in the Indian Penal Code for which he has been indicted on the basis of the final report filed by the police are in no way applicable to the facts in the instant case. The petitioners, in these circumstances, pray that the proceedings against them may be quashed.

2. The learned counsel for the petitioners submits that the final report has already been filed and the petitioners have been directed to appear before the learned Magistrate. The petitioners are willing and prepared to raise these contentions before the learned Magistrate. But the learned counsel for

the petitioners submits that the petitioners apprehend that they will be put to unnecessary vexation and harassment if they were to physically appear before the learned Magistrate.

3. I am of opinion that the petitioners have serious questions to be urged before the learned Magistrate. I am, in these circumstances, satisfied that the learned Magistrate must exempt the petitioners from personal appearance and permit the learned counsel for the petitioners to represent them and advance arguments for discharge under Sec.239/240 of the Cr.P.C. After hearing such arguments, only if the learned Magistrate feels that charge deserves to be framed, need the personal presence of the petitioners be insisted.

4. With the above observations, this Crl.M.C. is dismissed.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge